

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT WHARTON,

Petitioner,

v.

JAMIE SORBER, et al.,

Respondents.

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CIVIL ACTION

No. 01-6049

CAPITAL CASE

**PETITIONER’S MOTION FOR EXTENSION OF TIME TO SUBMIT
SUPPLEMENTAL EXPERT REPORT**

1. On November 17, 2020, this Court scheduled an evidentiary hearing to determine whether counsel was ineffective for failing to present evidence of Petitioner’s positive prison adjustment at his capital sentencing. The Court has provided dates for testimony on February 18 & 25 and March 8 & 16, 2021. ECF No. 212.

2. In that Order, this Court also directed the parties to serve any exhibits no later than January 11, 2021 and file any Motions In Limine no later than January 18, 2021. *Id.*

3. On June 5, 2020, Petitioner provided counsel for the District Attorney’s Office (DAO) and the Office of the Attorney General (OAG) a report by Dr. Neil Blumberg, M.D. This report was identified as a preliminary report because Dr. Blumberg had not interviewed Mr. Wharton given the lockdown of state prison facilities due to the COVID-19 pandemic. Petitioner intends to call Dr. Blumberg as a witness at the upcoming evidentiary hearing on February 25, 2021.

4. On January 11, 2021, undersigned counsel contacted counsel for the DAO and counsel for the OAG and advised them that Dr. Blumberg was scheduled to interview Mr. Wharton on February 1 and 5, 2021 and any supplemental report would be provided immediately thereafter. Undersigned counsel inquired whether counsel would object to this one exhibit being provided beyond this Court's exhibit deadline. Undersigned counsel received no response from counsel for the OAG and counsel for the DAO.

5. On January 18, 2021, counsel for the OAG filed their pre-hearing motions pursuant to this Court's November 17th order. In that Motion, counsel for the OAG asks this Court to strike any testimony from Dr. Blumberg regarding any evaluation of Mr. Wharton conducted later than January 11 because the report will not be provided in sufficient time for the OAG to prepare a cross-examination of Dr. Blumberg on February 25, 2021. ECF No. 213.

6. Undersigned counsel appreciates the necessity of having a date certain for exchange of exhibits so that each side has an opportunity to adequately prepare for cross-examination. However, Dr. Blumberg's initial report, which was provided to counsel on June 5, 2020, is detailed and contains the basis for his opinions that Petitioner does not meet the criteria for anti-social personality disorder and that he had positive prison adjustment at the time of his re-sentencing in 1992.

7. Petitioner respectfully requests that this Court extend the deadline for submission of exhibits and allow Petitioner to submit any supplemental report from Dr. Blumberg immediately after his evaluation of Mr. Wharton during the first week of February, 2021. If the OAG had informed counsel of its objection at the time of counsel's inquiry on January 11, counsel would have moved for this extension of time earlier. It is not anticipated that Dr. Blumberg will provide any new opinions based on his upcoming evaluation. Given this fact and

that counsel for the OAG will have almost three weeks to review this supplemental report prior to Dr. Blumberg's testimony, Petitioner requests that this Court grant Petitioner's request for extension of time to submit a supplemental expert report.

Respectfully submitted,

/s/ Elizabeth McHugh

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Dated: January 21, 2021
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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be filed and served upon the following person by ECF:

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/s/ Claudia Van Wyk

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Dated: January 21, 2021